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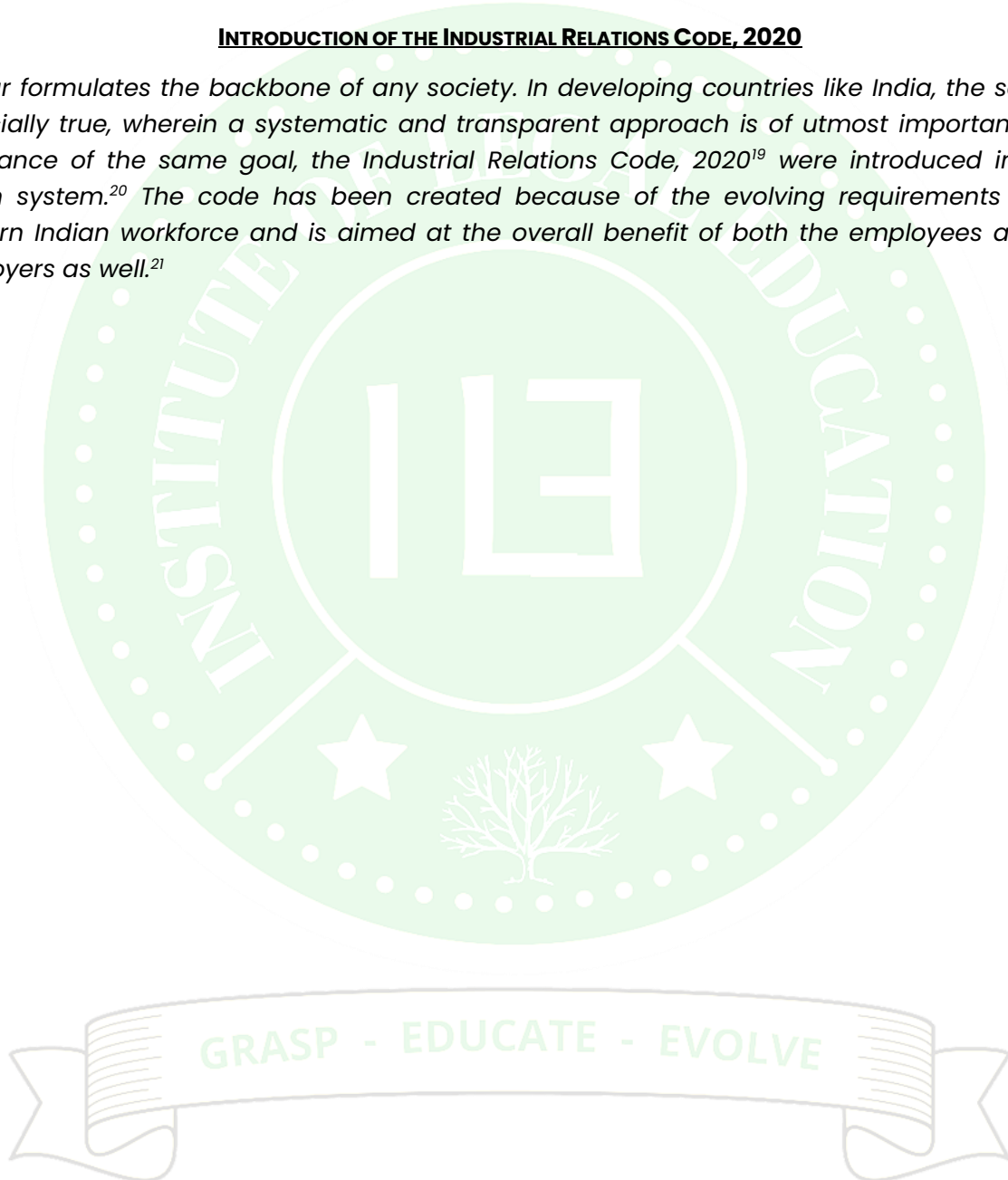
LEGISLATIVE COMMENTARY ON THE “INDUSTRIAL RELATIONS CODE, 2020”

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INTRODUCTION OF THE INDUSTRIAL RELATIONS CODE, 2020

Labour formulates the backbone of any society. In developing countries like India, the same is especially true, wherein a systematic and transparent approach is of utmost importance.¹⁸ In pursuance of the same goal, the Industrial Relations Code, 2020¹⁹ were introduced into the Indian system.²⁰ The code has been created because of the evolving requirements of the modern Indian workforce and is aimed at the overall benefit of both the employees and the employers as well.²¹



¹⁸ Roy, G.K. and Dubey, A., 2022. A Note on Industrial Relations Code, 2020. *The Indian Journal of Labour Economics*, pp.1-11.

¹⁹ The Industrial Relations Code, 2020 Act No. 35 of 2020.

²⁰ Trif, A., 2008. Opportunities and challenges of EU accession: Industrial relations in Romania. *European Journal of Industrial Relations*, 14(4), pp.461-478.

²¹ Bhuta, A., 2022. Imbalancing Act: India's Industrial Relations Code, 2020. *The Indian Journal of Labour Economics*, 65(3), pp.821-830.

Introduction: Getting a hands on understanding of the Code

The Industrial Relations Code, 2020 which was enacted on the 28th of September 2020 was primarily introduced to consolidate, untangle and repeal three central and major labour legislations that are enlisted hereunder-

- i. The Trade Unions Act, 1926
- ii. The Industrial Employment (Standing Orders) Act, 1946
- iii. The Industrial Disputes Act, 1947

Labour is a part of the Concurrent List (as under Entry nos. 55, 22, 61, 65, 23 & 24) of the Constitution of India which connotes that both the Union and State Legislatures can enact laws that modulate, synchronize and regulate labour in the country.

This legislation saw its inception because of the recommendation of the Second National Commission on Labour (2002), majorly seeking to govern the correlation between the employer-employee, re-skilling, working conditions and collective bargaining.

BACKGROUND: UNDERSTANDING THE NEED & IMPORTANCE OF THE PRESENT CODE

In the background of the unparalleled decline the Indian Economy was going through due to the Covid-19 pandemic and the consequent lockdowns, it had become crucial to put in effect some anticipated changes to the existing Indian labour laws to offer businesses more flexibility to function and adjust to remain competitive in the global markets.²² To make India self-sufficient, such a step was very essential.²³

The Parliament passed the Code to refurbish the existing Indian Labour Law. The Code pursues amalgamating and adapting the laws concerning the trade unions, employment conditions in industrial organizations, and

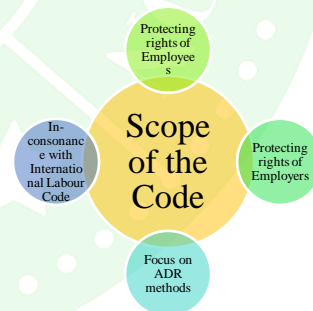
investigation and settlement of industrial disputes.²⁴



“Front Page of the Code: Elaborating upon the aim of the present code”

SCOPE & APPLICABILITY OF THE INDUSTRIAL RELATIONS CODE, 2020

The code endeavours to assist and benefit both employees as well as workers, simplifying the dispute resolution mechanism.²⁵ The code also assists in protecting fixed-term workers and requires all industrial establishments in implementing standing orders, providing re-skilling opportunities for retrenched workers,



and amplify the penalties as a mode to act as a deterrent to non-compliance.²⁶ The act has also sought an active adoption of a corporate and business-friendly approach wherein there is a promotion of industrial harmony through a single negotiating body and easing flexibility over the employers to bring about functional and operational decisions.²⁷

²² Id.
²³ Rogowski, R., 2000. Industrial relations as a social system. Industrielle Beziehungen/The German Journal of Industrial Relations, pp.97-126.

²⁴ Section 2, The Industrial Relations Code, 2020 Act No. 35 of 2020.
²⁵ Chapter 6 & 7, The Industrial Relations Code, 2020 Act No. 35 of 2020.
²⁶ Mitchell, R.W., 1972. The problem posed by technological change to industrial relations: Freedman v. The Canada labour code. McGill LJ, 18, p.592.
²⁷ Kuruvilla, S. and Venkataratnam, C.S., 1996. Economic development and industrial relations: the case of South and Southeast Asia. Industrial relations journal, 27(1), pp.9-23.

“Scope of the Code: Getting an Understanding”

The Code is further designated to guard the rights of employers and employees by delivering reforms about labour and facilitating the ease of doing business.²⁸ The Code was enacted with the legislative intent of enhancing industrial harmony by resolving industrial disputes in a hassle-free manner and turn to facilitate the advancement and progress of the industry.²⁹

UNDERSTANDING THE ACT: INTERPRETATION OF THE PROVISIONS & THE LEGAL JURISPRUDENCE

Multiple Legal and Allied changes have taken place via the enactment of the present act. These changes are expected to be helpful in the long-run scenario of the labour laws and allied jurisprudence in the nation.³⁰ Some of the primary aspects of the same are as follows:

CHANGES TO LEGAL TERMS: MAKING THE LEGAL TERMINOLOGY MORE ACCESSIBLE

The term ‘appropriate government’ explains that for all the Central Public Sector Undertakings, even where the government has got rid of its stake to below 50%, the Central Government shall remain to be the appropriate government.³¹ Potentially, this could postulate a trail to the Government for undertaking more divestment in the public sector undertakings in the upcoming future while appeasing the redressal demands of the PSUs employees.

The coverage scope of the law has been extended to incorporate all employees comprising of the supervisory, managerial and administrative staff, who were omitted from the Industrial Disputes Act’s realm.³² The term ‘employer’s’ scope was expanded to

incorporate nearly all the employers comprising contractors and legal representatives of a deceased employer, who were omitted from the provisions under the Industrial Disputes Act.³³ Likewise, the term ‘workers’, used instead of the term ‘workman’ as in the Industrial Disputes Act, also encompasses people employed in supervisory work.³⁴ It even covers the working journalists and employees of sales promotion.³⁵ The extension of the above-mentioned terms also led to the extension of the ‘industrial dispute’ realm itself.³⁶



“Salient Features of the Industrial Relations Code, 2020.”

The definition of ‘industry’³⁷ has also been expounded to comprise most of the production, supply and distribution of goods enterprises while eliminating the charitable organizations, and functions of the Government which are sovereign and the domestic workers.³⁸

The terms ‘lay-off’³⁹, ‘lock-out’⁴⁰ and ‘retrenchment’⁴¹ have not observed much of a noteworthy change in their definitions. From now on, the term ‘strike’ will also comprise of absence or refusal to work of more than 50% of workers. According to the code, the term “wages” will encompass basic pay, dearness

²⁸ Varghese, S., 2022. The Industrial Relations Code, 2020: Legislative Commentary. Issue 1 Int’l J.L. Mgmt. & Human., 5, p.1924.
²⁹ Rappert, B., Webster, A. and Charles, D., 1999. Making sense of diversity and reluctance: academic-industrial relations and intellectual property. Research policy, 28(8), pp.873-890.
³⁰ Khurana, S.K., 1972. Industrial relations in private and public sector industry in India: A comparative analysis. Indian Journal of Industrial Relations, pp.411-431.
³¹ Section 2 (a), The Industrial Relations Code, 2020 Act No. 35 of 2020.
³² Section 2, The Industrial Relations Code, 2020 Act No. 35 of 2020.

³³ Section 2 (m), The Industrial Relations Code, 2020 Act No. 35 of 2020.
³⁴ Section 2 (zr), The Industrial Relations Code, 2020 Act No. 35 of 2020.
³⁵ Fox, A., 2012. Industrial relations: a social critique of pluralist ideology. In Man and organization (pp. 185-233). Routledge.
³⁶ Section 2 (q), The Industrial Relations Code, 2020 Act No. 35 of 2020.
³⁷ Section 2 (p), The Industrial Relations Code, 2020 Act No. 35 of 2020.
³⁸ Tóth, A., 1998. The Transformation of the Industrial Relations System in Hungary. SEER: Journal for Labour and Social Affairs in Eastern Europe, 1(3), pp.117-133.
³⁹ Section 2 (f), The Industrial Relations Code, 2020 Act No. 35 of 2020.
⁴⁰ Section 2 (u), The Industrial Relations Code, 2020 Act No. 35 of 2020.
⁴¹ Section 2 (zh), The Industrial Relations Code, 2020 Act No. 35 of 2020.

and retaining allowance.⁴² However, it excludes bonuses, HRA, PF contribution of employer, conveyance and overtime allowance, commission, gratuity and other forms of retirement benefits.⁴³

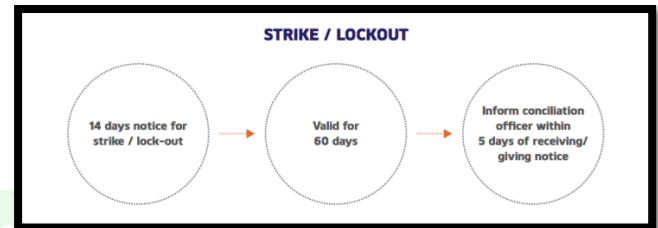
**PUSH FOR ALTERNATE DISPUTE REDRESSAL MECHANISMS:
FUTURE OF DISPUTES**

The Code excels in its noteworthy push to provide various venues outside of the conventional labour courts for the redressal of any grievance and dispute.⁴⁴ A praiseworthy idea in the Code is the provision which provides for the composition of a Grievance Redressal Committee⁴⁵, as an internal redressal procedure for fast-track redressal of the individual worker's grievances, in all the organizations employing at least 20 or more workers (within 30 days). The appeal is directed to the Conciliation Officer and further appeal is directed to the Industrial Tribunal.⁴⁶

ARBITRATION: A NEW FORM OF SOLVING PROBLEMS?

The provision of usage of arbitration for voluntary reference and redressal of disputes is a remarkable step taken in the Code.⁴⁷ Moreover, recognition of both inside and outside conciliation proceedings' settlements and delivery of arbitration awards, making them obligatory to the parties involved, are also provided by the Code.⁴⁸ In addition to the existing Industrial Tribunal, the Code also allows the establishment of more than one National Industrial Tribunal which shall, by consensus, adjudge disputes that are considered to be of national importance or affect organizations in various states, as are referred to it.⁴⁹ Another significant feature of the Code is that it shall also impact the pending disputes which will be shifted to suitable forums, as per the Code. The

disputes can either be adjudged either de novo or from the current stage, as deemed fit by the concerned forum.



“Strike/Lockout Process under the new code”

**SOCIAL JUSTICE VIS-À-VIS STATE POLICY:
UNDERSTANDING THE ACT**

A fascinating feature of the Code is that the suitable State Government or the Central Government is given a choice to exercise a veto on the execution of any award on “public grounds affecting the national economy or social justice”⁵⁰ subject to the ensuing approval of such executive action carried on by either the State Legislature or the Parliament, as the case may be.⁵¹ As per the Code, the workers can recover money from their respective employers by commencing proceedings in the prescribed manner with the suitable government.⁵²

HIRE AND FIRE OR MISFIRE: UNDERSTANDING THE ENIGMA

The usual provisions (as in the Industrial Disputes Act, 1947) for continuous service, lay-offs, retrenchment and notice before the business' closure are mostly the same in the Code.⁵³ However, the Code provides more flexibility, to employers, in the process of hiring and firing by utilizing the appointment of fixed-term workers. Simultaneously, the Code pursues to balance the scales by covering all the statutory benefits comprising of gratuity to the fixed-term workers who are employed for over a year.⁵⁴

⁴² Section 2 (zq), The Industrial Relations Code, 2020 Act No. 35 of 2020.

⁴³ Id.

⁴⁴ Müller-Jentsch, W., 2004. Theoretical approaches to industrial relations. Theoretical perspectives on work and the employment relationship, pp.1-40.

⁴⁵ Section 4, The Industrial Relations Code, 2020 Act No. 35 of 2020.

⁴⁶ Punekar, S.D., 1966. Aspects of state intervention in Industrial relations in India: An evaluation. In Industrial Relations and Economic Development (pp. 21-43). Palgrave Macmillan, London.

⁴⁷ Chapter 6 & 7, The Industrial Relations Code, 2020 Act No. 35 of 2020.

⁴⁸ Id.

⁴⁹ Section 2 (y), The Industrial Relations Code, 2020 Act No. 35 of 2020.

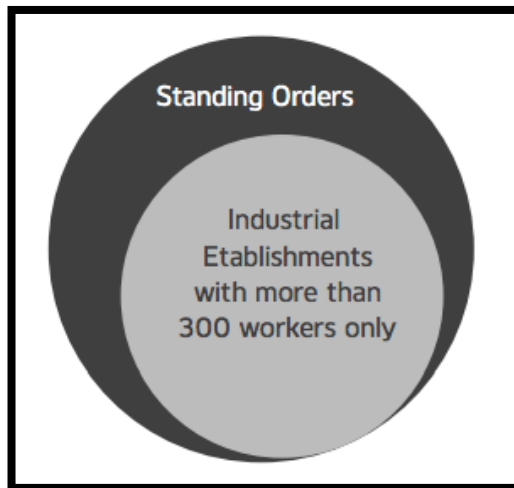
⁵⁰ Section 55, The Industrial Relations Code, 2020 Act No. 35 of 2020.

⁵¹ Mathew, B. and Jain, C., 2018. Reviewing the Labour Code on Industrial Relations Bill, 2015. Economic & Political Weekly, 53(21), p.17.

⁵² Id.

⁵³ Section 2, The Industrial Relations Code, 2020 Act No. 35 of 2020.

⁵⁴ Id.



“According to IRC 20, establishments with 300 or more employees on any day during the previous year are subject to the regulations of standing orders.”

The Code provides another much-needed idea, for establishing a workers’ reskilling fund for retrenched workers with both the employers and suitable Government contributions.⁵⁵ While the Code offers a time out for the businesses by lifting the boundaries for the Standing Orders and also grasps some praiseworthy initiatives on the redressal of disputes’ side, the key provisions relating to lay-offs, lockouts and retrenchment stay mostly unaffected and therefore, continue to be strictly controlled.⁵⁶

Elucidation of various Dispute Redressal Mechanisms: Understanding the Jurisprudential Impact of the Code

- ⇒ **Bi partite Forums:** Industries and companies having 100 or more workers would be required to institute a works committee that consists of both employers and workers for preserving and securing relations between the employer and that of the employees.
- ⇒ **Arbitration:** Disputes may further be referred to arbitration on mutual consent of both the aggrieved parties in accordance to the act.

- ⇒ In addition, Conciliation officers are to be appointed by appropriate government.
- ⇒ **National Industrial Tribunals:** This Tribunal is set up for the settlement of industrial disputes which consists of:
 - i. Questions of national importance
 - ii. Issues that would impact industries in more than one state

Such a Tribunal would include- A Judicial Member, who has been a High Court Judge, an Administrative Member, who have been in a Secretarial position in the Central Government.

Therefore, the Code provides for an enhanced and streamlined notion towards dispute settlement wherein there is an institution of a Bi-partite forum for internal dispute resolution. This simplification of dispute resolution process ensures that disputes would be settled expeditiously with scope of repeated appeals.

CRITICAL ANALYSIS: UNDERSTANDING THE CODE VIS-À-VIS TRADE UNIONS

According to the Code, for any Trade Union to be recognized or be registered, the requirements are either subscription of at least 10% of workers or 100 workmen employed in an industrial organization, whichever is less.⁵⁷ The requirements are required to be continued even post-registration.⁵⁸ The Trade Unions will be considered body corporates; however, they shall be excluded from the horizon of the Societies Registration Act, 1860⁵⁹, the Cooperative Societies Act, 1912⁶⁰, the Multi-State Cooperative Societies Act, 2002⁶¹ and the Companies Act, 2013.⁶²

Notwithstanding the preservation of the concept of a Works Committee, the Code also acknowledges the Trade Unions which are

⁵⁵ Bassanini, A. and Ernst, E., 2002. Labour market regulation, industrial relations and technological regimes: a tale of comparative advantage. *Industrial and Corporate Change*, 11(3), pp.391-426.

⁵⁶ Godard, J. and Delaney, J.T., 2000. Reflections on the “high performance” paradigm’s implications for industrial relations as a field. *ILR Review*, 53(3), pp.482-502.

⁵⁷ Chapter 03, The Industrial Relations Code, 2020 Act No. 35 of 2020.

⁵⁸ Howell, C., 2009. The transformation of French industrial relations: Labor representation and the state in a post-dirigiste era. *Politics & Society*, 37(2), pp.229-256.

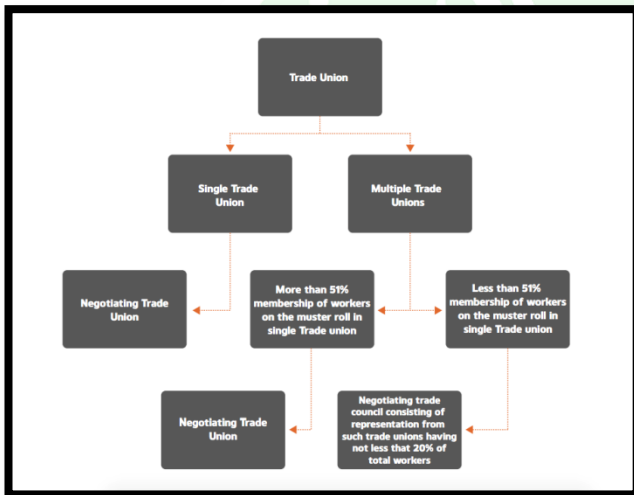
⁵⁹ SOCIETIES REGISTRATION ACT, 1860, Act No. 21 of Yr. 1860.

⁶⁰ THE CO-OPERATIVE SOCIETIES ACT, 1912 ACT NO. 2 OF 1912.

⁶¹ The Multi-State Cooperative Societies Act, 2002, Act No of 39 of 2002.

⁶² Bayliss, F. and Kessler, S., 1998. *Contemporary British industrial relations*. Bloomsbury Publishing.

recognized (with a subscription of 51% or more workers, when there are more than a Trade Union) as the only negotiating union or the negotiating council.⁶³ The Tribunal will adjudicate any disputes either between rival Trade Unions or between a Trade Union and its workers.⁶⁴ To avoid any overtaking of Trade Unions by any external vested interest or any political postulants, the Code provides a precautionary measure –in an unorganized sector, a minimum of 50% of Trade Union's⁶⁵ office bearers should include people who are employed in the organization or the industry.⁶⁶



“Trade Unions: Under the Preview of the Code”

Any standing orders passed under the new law shall apply to every industrial organization with 300 or more workers (previously, the limit was 100 workers under the Industrial Disputes Act).⁶⁷ Model standing orders will be made by the central government, whereupon, the employers must abide by the suit along with their draft standing orders based consequently within 6 months from there.⁶⁸ Therein, the Trade Unions

⁶³ Cook, M.L., 1998. Toward Flexible Industrial Relations? Neo-Liberalism, Democracy, and Labor Reform in Latin America. *Industrial Relations: A Journal of Economy and Society*, 37(3), pp.311-336.

⁶⁴ Tyagi, S. and Babbar, T., 2020. Industrial Relations Code, 2020: The Dawn of the Reformation. *Issue 5 Int'l J.L Mgmt. & Human.*, 3, p.1358.

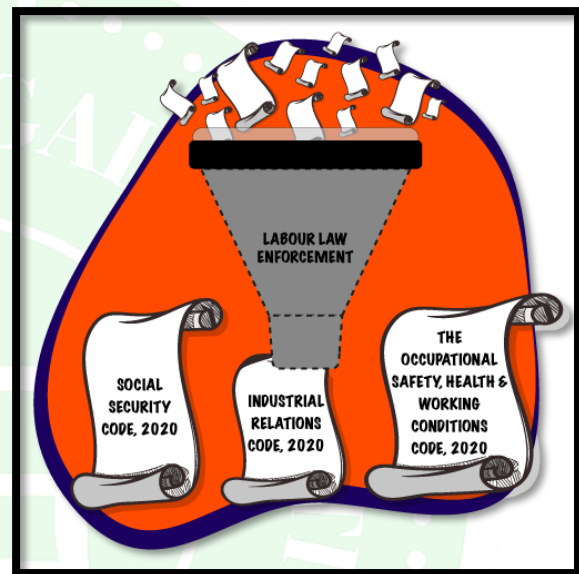
⁶⁵ Section 2 (zl), The Industrial Relations Code, 2020 Act No. 35 of 2020.

⁶⁶ Hammer, N., 2005. International Framework Agreements: global industrial relations between rights and bargaining. *Transfer: European Review of Labour and Research*, 11(4), pp.511-530.

⁶⁷ Ashwin, S., Oka, C., Schuessler, E., Alexander, R. and Lohmeyer, N., 2020. Spillover effects across transnational industrial relations agreements: The potential and limits of collective action in global supply chains. *Ilr Review*, 73(4), pp.995-1020.

⁶⁸ Bechter, B., Brandl, B. and Meardi, G., 2012. Sectors or countries? Typologies and levels of analysis in comparative industrial relations. *European Journal of Industrial Relations*, 18(3), pp.185-202.

will be referred with and thereupon the draft Standing Orders will be certified by a Certifying Officer. Concerning the Jurisprudential development of the law of Trade Unions⁶⁹, the “Code” sanctioned that whenever there are more than one trade union in an establishment, the status of sole negotiating union would be given to the one with more than 51% of the employees as its members.⁷⁰



“Labour Law: Understanding the Enforcement of the same”

SUGGESTIONS & RECOMMENDATIONS: WAY AHEAD FOR THE FUTURE

After a thorough and complete understanding and analysis, as carried out above. The following Suggestions & Recommendations are being suggested for effective improvement in the field of Labour Law Regime in India.⁷¹ The Suggestions & Recommendations are as follows:

- I. Specific legislation or specific regulations are to be created for this particular field of Labour Laws law, which would encompass all the allied laws, regulations, and rules required.

⁶⁹ Section 2 (zl), The Industrial Relations Code, 2020 Act No. 35 of 2020.

⁷⁰ Do, C.Q., 2011. Understanding Industrial Relations Transformation in Vietnam: A multi-dimensional approach.

⁷¹ Thomas, M.P., 2011. Global industrial relations? Framework agreements and the regulation of international labor standards. *Labor Studies Journal*, 36(2), pp.269-287.



- II. Creation of a Uniform international legal system for the larger global economy and international Labour code regime.
- III. Carrying out specific research and other in-depth research in this area of law, for ensuring that the government and the allied regulatory authority are aware of all the concerned perspectives associated.
- IV. Understanding the monumental failures in this particular field of law before and preparing and contemplating for the future based on that.
- V. Understanding the loopholes in the present system and ensuring that the big issues and complexities are resolved are foremost.
- VI. Understanding the present issues from multiple perspectives, primarily that of the deeply involved stakeholders, such as the government, regulatory authority, and the individuals who will get directly affected by the rise of any issues in this arena of law.
- VII. Comparative analysis of the present labour code, with that of the international system, suggests that multiple aspects are present and in consonance with the international system of the common law nations, thus an overall reform would be suggested.

CONCLUSION: SUMMARIZING THE ENTIRE ISSUE

The unprecedented pandemic has resulted in a slump that economies across the world are currently reeling from. This in turn brings about the need for changes in the Indian labour laws to ensure that business is provided with a breather and is allowed to adapt, operate and function in global markets.⁷² This Code would further help energise and spur economic activity.⁷³ During the ongoing litigation or

alternative dispute resolution mechanism, there will be restrictions on strikes, which in turn, will guarantee industries continue operating without any stoppage of work. The initiation of a sole negotiating union and sole negotiating council will also lead to the reduction of time taken in attaining harmonious settlements with employees.⁷⁴ This is so because it is frequently the case that employers are approached by multiple unions with various and diverse demands. Thereby resulting in negotiations on multiple fronts with stakeholders having distinct interests.⁷⁵

The impact of the Industrial Relations Code, 2020 on the right to strike workers remains to be seen.⁷⁶ Nonetheless, it offers a more efficient approach to dispute settlement. This can be comprehended in the scheme of authorities established under the Act, while the bi-partite is internal dispute resolution mechanisms, the Industrial Tribunals and Conciliation Officers are the external forums.⁷⁷

⁷² Fine, J., 2015. Alternative labour protection movements in the United States: Reshaping industrial relations?. *International Labour Review*, 154(1), pp.15-26.

⁷³ Id.

⁷⁴ Hartzén, A.C., 2017. The European social dialogue in perspective: its future potential as an autopoietic system and lessons from the global maritime system of industrial relations (Doctoral dissertation, Lund University).

⁷⁵ Kaufman, B.E., 2010. The theoretical foundation of industrial relations and its implications for labor economics and human resource management. *ILR Review*, 64(1), pp.74-108.

⁷⁶ Weiss, M., Schmidt, M. and Hlava, D., 2020. *Labour law and industrial relations in Germany*. Kluwer Law International BV.

⁷⁷ Whitfield, K. and Strauss, G., 2000. Methods matter: changes in industrial relations research and their implications. *British Journal of Industrial Relations*, 38(1), pp.141-151.